

AMENDED IN ASSEMBLY AUGUST 23, 2012

AMENDED IN ASSEMBLY AUGUST 6, 2012

AMENDED IN ASSEMBLY JUNE 28, 2012

AMENDED IN ASSEMBLY JUNE 21, 2012

AMENDED IN SENATE MARCH 26, 2012

SENATE BILL

No. 1212

Introduced by Senator Calderon

February 22, 2012

An act to amend Sections 38.5, 663, 678, 678.1, and 10086 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1212, as amended, Calderon. Insurance: electronic transmission.

Existing law authorizes the electronic transmission of any written notice required to be given or mailed to any person by an insurer relating to any insurance on risks or on operations in this state, as specified.

This bill would ~~provide that any provision of the Insurance Code that expressly authorizes electronic transmission shall govern over any other conflicting state law. The bill would also~~ authorize offers of renewal of automobile, property, or commercial insurance, as well as certain liability insurance, and any offer of coverage or renewal and any disclosure of earthquake coverage, to be provided electronically *with the insured's consent*, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 38.5 of the Insurance Code is amended to read:

38.5. (a) Any written notice required to be given or mailed to any person by an insurer relating to any insurance on risks or on operations in this state not excepted by Section 1851 from the coverage of Chapter 9 (commencing with Section 1850.4) of Part 2 of Division 1 of this code may, if not excluded by subdivision (b) or (c) of Section 1633.3 of the Civil Code, be provided by electronic transmission pursuant to Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the Civil Code, if each party has agreed to conduct the transaction by electronic means pursuant to Section 1633.5 of the Civil Code. The affidavit of the person who initiated the electronic transmission, stating the facts of that transmission into an information processing system outside of the control of the sender or of any person that sent the electronic record on behalf of the sender, is prima facie evidence that the notice was transmitted and shall be sufficient proof of notice. Any notice provided by electronic transmission shall be treated as if mailed or given for the purposes of any provision of this code, except as provided by subdivision (g) of Section 1633.15 of the Civil Code. The insurance company shall maintain a system for confirming that any notice or document that is to be provided by electronic means has been sent in a manner consistent with Section 1633.15 of the Civil Code. A valid electronic signature shall be sufficient for any provision of law requiring a written signature. The insurance company shall retain a copy of the confirmation and electronic signature, when either is required, with the policy information so that they are retrievable upon request by the Department of Insurance while the policy is in force and for five years thereafter.

(b) Notwithstanding any exclusionary provision described in subdivision (a), ~~any provision of this code that expressly authorizes electronic transmission shall govern over any other conflicting state law.~~ *the offer of renewal required by Section 663, the offer of renewal required by Section 678, the notice of conditional renewal required by Section 678.1, and the offer of coverage or renewal or any disclosure required by Section 10086 may be*

1 *provided by electronic transmission if an insurer complies with*
2 *those sections and with all provisions of subdivision (c).*

3 *(c) An insurer shall not provide the documents referenced in*
4 *subdivision (b) by electronic transmission unless it complies with*
5 *all of the following:*

6 *(1) An insurer, or insurer's representative, has sought and*
7 *acquired the affirmative consent of the named insured, and the*
8 *named insured has not withdrawn that consent, prior to providing*
9 *the document by electronic transmission. Affirmative consent may*
10 *be sought and acquired verbally, in writing, or electronically. The*
11 *insurer shall retain a record of the named insured's consent to*
12 *receive the document electronically with the policy information*
13 *so that it is retrievable upon request by the Department of*
14 *Insurance while the policy is in force and for five years thereafter.*

15 *(2) An insurer seeking the named insured's affirmative consent*
16 *to provide the document by electronic transmission shall advise*
17 *the named insured that opting in to electronic transmission is*
18 *voluntary, and shall provide a method such as a toll-free telephone*
19 *number, e-mail address, or Internet Web site address that the*
20 *named insured can use to confirm the legitimacy of an e-mail from*
21 *an insurer, report a change in the named insured's e-mail address,*
22 *or otherwise communicate with an insurer.*

23 *(3) An insurer that has received the affirmative consent of the*
24 *named insured to electronic transmission shall obtain the e-mail*
25 *address to which the named insured requests delivery of electronic*
26 *transmissions. The insurer shall inform the named insured if the*
27 *e-mail or electronic document permitted pursuant to this section*
28 *is undeliverable when sent to the e-mail address provided by the*
29 *named insured.*

30 *(4) An insurer shall maintain a process or system that can*
31 *demonstrate that the e-mail or document was sent by electronic*
32 *transmission to the named insured. If the e-mail is undeliverable*
33 *electronically, the insurer shall inform the named insured,*
34 *complying with all provisions of the applicable section of this code.*
35 *The insurer shall retain information demonstrating that the*
36 *document was sent by electronic transmission or mail with the*
37 *policy information so that the information is retrievable upon*
38 *request by the Department of Insurance while the policy is in force*
39 *and for five years thereafter.*

1 (5) *An insurer shall allow a named insured to opt out of receipt*
2 *by electronic transmission of the documents referenced in*
3 *subdivision (b) at any time.*

4 (d) *For purposes of this section, an undeliverable e-mail*
5 *message is a message which indicates there is a permanent fatal*
6 *error in the delivery of the original message to the named insured.*

7 SEC. 2. Section 663 of the Insurance Code is amended to read:

8 663. (a) Before policy expiration, an insurer shall deliver to
9 or mail to the named insured, at the address shown on the policy,
10 one of the following:

11 (1) At least 20 days before expiration, a written or verbal offer
12 of renewal of the policy, contingent upon payment of premium as
13 stated in the offer.

14 (2) At least 30 days before expiration, a written notice of
15 nonrenewal of the policy, including the statement required by
16 Section 666.

17 (b) (1) An insurer that delivers a verbal offer to renew that is
18 declined by an insured shall, at least 20 days before expiration of
19 the policy, deliver to or mail to the named insured, at the address
20 shown on the policy, a written confirmation of the offer and
21 rejection.

22 (2) An insurer that attempts to satisfy subdivision (a) with a
23 verbal offer to renew, but is unable to contact the named insured
24 directly at least 20 days before policy expiration, shall, at least 20
25 days before policy expiration, deliver to or mail to the named
26 insured, at the address shown on the policy, a written offer to renew
27 the policy, contingent upon payment of premium as stated in the
28 offer.

29 (c) In the event that an insurer fails to give the named insured
30 either an offer of renewal or notice of nonrenewal as required by
31 this section, the existing policy, with no change in its terms and
32 conditions, shall remain in effect for 30 days from the date that
33 either the offer to renew or the notice of nonrenewal is delivered
34 or mailed to the named insured. A notice to this effect shall be
35 provided by the insurer to the named insured with the policy or
36 the notice of renewal or nonrenewal. Notwithstanding the failure
37 of an insurer to comply with this section, the policy shall terminate
38 on the effective date of any other replacement or succeeding
39 automobile insurance policy procured by the insured, or his *or her*

1 agent or broker, with respect to any automobile designated in both
2 policies.

3 (d) The insurer shall not be required to notify the named insured,
4 or any other insured, of nonrenewal of the policy if the insurer has
5 mailed or delivered a notice of expiration or cancellation, on or
6 prior to the 30th day preceding expiration of the policy period.

7 (e) Notwithstanding any provision to the contrary, the offer of
8 renewal pursuant to this section may be provided electronically *if*
9 *the insurer complies with subdivisions (b) and (c) of Section 38.5.*

10 SEC. 3. Section 678 of the Insurance Code is amended to read:

11 678. (a) At least 45 days prior to policy expiration, an insurer
12 shall deliver to the named insured or mail to the named insured at
13 the address shown in the policy, either of the following:

14 (1) An offer of renewal of the policy contingent upon payment
15 of premium as stated in the offer, stating each of the following:

16 (A) Any reduction of limits or elimination of coverage.

17 (B) The telephone number of the insurer's representatives who
18 handle consumer inquiries or complaints. The telephone number
19 shall be displayed prominently in a font size consistent with the
20 other text of the renewal offer.

21 (2) A notice of nonrenewal of the policy. That notice shall
22 contain each of the following:

23 (A) The reason or reasons for the nonrenewal.

24 (B) The telephone number of the insurer's representatives who
25 handle consumer inquiries or complaints. The telephone number
26 shall be displayed prominently in a font size consistent with the
27 other text of the notice of nonrenewal.

28 (C) A brief statement indicating that if the consumer has
29 contacted the insurer to discuss the nonrenewal and remains
30 unsatisfied, he or she may have the matter reviewed by the
31 department. The statement shall include the telephone number of
32 the unit within the department that responds to consumer inquiries
33 and complaints.

34 (b) In the event an insurer fails to give the named insured either
35 an offer of renewal or notice of nonrenewal as required by this
36 section, the existing policy, with no change in its terms and
37 conditions, shall remain in effect for 45 days from the date that
38 either the offer to renew or the notice of nonrenewal is delivered
39 or mailed to the named insured. A notice to this effect shall be

1 provided by the insurer to the named insured with the policy or
2 the notice of renewal or nonrenewal.

3 (c) Any policy written for a term of less than one year shall be
4 considered as if written for a term of one year. Any policy written
5 for a term longer than one year, or any policy with no fixed
6 expiration date, shall be considered as if written for successive
7 policy periods or terms of one year.

8 (d) This section applies only to policies of insurance specified
9 in Section 675.

10 (e) Notwithstanding any ~~other law~~ *provision* to the contrary,
11 the offer of renewal ~~pursuant to this section~~ *described in paragraph*
12 *(1) of subdivision (a)* may be provided electronically *if the insurer*
13 *complies with subdivisions (b) and (c) of Section 38.5.*

14 SEC. 4. Section 678.1 of the Insurance Code is amended to
15 read:

16 678.1. (a) This section applies only to policies of insurance
17 of commercial insurance that are subject to Sections 675.5 and
18 676.6.

19 (b) A notice of nonrenewal shall be in writing and shall be
20 delivered or mailed to the producer of record and to the named
21 insured at the mailing address shown on the policy. Subdivision
22 (a) of Section 1013 of the Code of Civil Procedure shall be
23 applicable if the notice is mailed.

24 (c) An insurer, at least 60 days, but not more than 120 days, in
25 advance of the end of the policy period, shall give notice of
26 nonrenewal, and the reasons for the nonrenewal, if the insurer
27 intends not to renew the policy, or to condition renewal upon
28 reduction of limits, elimination of coverages, increase in
29 deductibles, or increase of more than 25 percent in the rate upon
30 which the premium is based.

31 (d) If an insurer fails to give timely notice required by
32 subdivision (c), the policy of insurance shall be continued, with
33 no change in its terms or conditions, for a period of 60 days after
34 the insurer gives the notice.

35 (e) With respect to policies defined in subdivision (b) of Section
36 676.6, in addition to the bases for conditional renewal set forth in
37 subdivision (c), an insurer may also condition renewal upon
38 requirements relating to the underlying policy or policies. If the
39 requirements are not satisfied as of (1) the expiration date of the
40 policy, or (2) 30 days after mailing or delivery of such notice,

1 whichever is later, the conditional renewal notice shall be treated
2 as an effective notice of nonrenewal, provided the insurer has sent
3 written confirmation to the first named insured and the producer
4 of record that the conditions were not met and that coverage ceased
5 at the expiration date shown in the expiring policy.

6 (f) A notice of nonrenewal shall not be required in any of the
7 following situations.

8 (1) The transfer of, or renewal of, a policy without a change in
9 its terms or conditions or the rate on which the premium is based
10 between insurers that are members of the same insurance group.

11 (2) The policy has been extended for 90 days or less, if the
12 notice required in subdivision (c) has been given prior to the
13 extension.

14 (3) The named insured has obtained replacement coverage or
15 has agreed, in writing, within 60 days of the termination of the
16 policy, to obtain that coverage.

17 (4) The policy is for a period of no more than 60 days and the
18 insured is notified at the time of issuance that it may not be
19 renewed.

20 (5) The named insured requests a change in the terms or
21 conditions or risks covered by the policy within 60 days prior to
22 the end of the policy period.

23 (6) The insurer has made a written offer to the insured, within
24 the time period specified in subdivision (c), to renew the policy
25 under changed terms or conditions or at a changed premium rate.
26 As used herein, “terms or conditions” includes, but is not limited
27 to, a reduction in limits, elimination of coverages, or an increase
28 in deductibles.

29 (g) Notwithstanding any ~~other law~~ *provision* to the contrary,
30 ~~the offer of renewal or notice of conditional renewal pursuant to~~
31 ~~this section described in subdivision (c)~~ may be provided
32 electronically *if the insurer complies with subdivisions (b) and (c)*
33 *of Section 38.5.*

34 SEC. 5. Section 10086 of the Insurance Code is amended to
35 read:

36 10086. (a) If an offer of earthquake coverage is accepted, the
37 coverage shall be continued at the applicable rates and conditions
38 for the policy term, provided the policy of residential property
39 insurance is not terminated by the named insured or insurer.

1 (1) At any renewal, an insurer may modify the terms and
2 conditions of an existing policy, rider, or endorsement providing
3 coverage against loss or damage caused by the peril of earthquake
4 if the modified terms and conditions provide the minimum
5 coverages required by Section 10089.

6 (2) An insurer that modifies the terms and conditions of an
7 existing policy, rider, or endorsement shall provide the insured
8 with the renewal notice in a stand-alone disclosure document
9 stating the changes in the terms and conditions of the insured's
10 existing policy, rider, or endorsement. Proof of mailing of the
11 disclosure document by first-class mail to a named insured at the
12 mailing address shown on the policy or application creates a
13 conclusive presumption that the disclosure document was provided.
14 The disclosure shall include the following statement in 14-point
15 boldface type:

16
17 THE COVERAGE IN THE POLICY WE ARE OFFERING
18 YOU WITH THIS RENEWAL HAS BEEN REDUCED, AND
19 SUBSTANTIALLY DIFFERS FROM THE COVERAGES
20 PROVIDED BY YOUR HOMEOWNERS' POLICY.
21 INSURANCE COMPANIES ARE ALLOWED TO RENEW
22 EARTHQUAKE INSURANCE POLICIES WITH COVERAGE
23 THAT IS REDUCED FROM THE COVERAGE YOU
24 PREVIOUSLY PURCHASED. YOU MAY REQUEST A
25 SAMPLE COPY OF THIS NEW POLICY TO REVIEW PRIOR
26 TO MAKING A DECISION TO ACCEPT THIS RENEWAL,
27 AND WE WILL MAIL OR DELIVER IT TO YOU WITHIN 14
28 DAYS OF YOUR REQUEST. A REQUEST FOR THE SAMPLE
29 COPY SHALL NOT CHANGE OR EXTEND THE POLICY
30 EXPIRATION DATE SPECIFIED IN THE RENEWAL NOTICE.
31 A SUMMARY OF THE CHANGES IS INCLUDED WITH THIS
32 NOTICE.

33
34 The commissioner shall approve the form of the summary at the
35 time he or she approves the policy. The summary shall include the
36 information contained in subdivision (a) of Section 10083, and
37 may be included with the renewal notice in standard type.

38 The commissioner may approve substantially similar disclosure
39 forms if necessary to accurately disclose relevant information to
40 the policyholder. The commissioner may also approve disclosure

1 forms substantially similar to the disclosure statement required by
2 Section 10083 if necessary to accurately disclose relevant
3 information to the policyholder.

4 (3) If the earthquake coverage is provided by a policy issued
5 by the California Earthquake Authority, the following disclosure
6 shall be provided in 14-point boldface type:

7
8 CALIFORNIA EARTHQUAKE AUTHORITY POLICY
9 DISCLOSURE
10

11 THIS POLICY IS BEING PURCHASED FROM THE
12 CALIFORNIA EARTHQUAKE AUTHORITY (“CEA”). THE
13 COVERAGE IN THIS CEA POLICY SUBSTANTIALLY
14 DIFFERS FROM THE COVERAGES PROVIDED IN YOUR
15 HOMEOWNER’S POLICY. THE CEA IS NOT PART OF OR
16 ASSOCIATED WITH YOUR HOMEOWNER’S INSURANCE
17 COMPANY. IF LOSSES AS A RESULT OF AN EARTHQUAKE
18 OR A SERIES OF EARTHQUAKES EXCEED THE
19 AVAILABLE RESOURCES OF THE CEA, THIS POLICY IS
20 NOT COVERED BY THE CALIFORNIA INSURANCE
21 GUARANTY ASSOCIATION. THEREFORE, THE
22 CALIFORNIA INSURANCE GUARANTY ASSOCIATION
23 WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR
24 ASSETS IF THE CEA BECOMES INSOLVENT AND IS
25 UNABLE TO MAKE PAYMENTS AS PROMISED. IN
26 ADDITION, YOUR CEA POLICY MAY BE SUBJECT TO
27 FUTURE SURCHARGES OF THE POLICY PREMIUM IN
28 CERTAIN CASES WHERE AN EARTHQUAKE OR SERIES
29 OF EARTHQUAKES HAS EXCEEDED AVAILABLE
30 RESOURCES TO PAY CLAIMS. IN THAT CASE, THIS
31 MEANS THAT IN ADDITION TO THE ANNUAL PREMIUM,
32 YOU MAY BE CHARGED UP TO AN ADDITIONAL 20% OF
33 THE PREMIUM.

34 (b) If the offer is not accepted, the insurer or any affiliated
35 insurer shall be required on an every other year basis to offer
36 earthquake coverage in connection with any continuation, renewal,
37 or reinstatement of the policy following any lapse thereof, or with
38 respect to any other policy that extends, changes, supersedes, or
39 replaces the policy of residential property insurance.

- 1 (c) Nothing in this section shall preclude the named insured
2 from terminating the earthquake coverage at any time.
- 3 (d) Notwithstanding any ~~other law~~ *provision* to the contrary,
4 any offer of coverage or renewal or any disclosure pursuant to this
5 section may be provided electronically *if the insurer complies with*
6 *subdivisions (b) and (c) of Section 38.5.*